

TITLE 2, SECTION 7288.0 – HARASSMENT TRAINING AND EDUCATION

Notice published December 16, 2005

NOTICE OF PROPOSED RULEMAKING

The California Fair Employment and Housing Commission (“Commission”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The Commission also proposes to amend existing reserved sections 7288.0 – Labor Organizations, 7288.1 – Apprenticeship Programs, and 7288.2 – Employment Agencies by renumbering each section by one number to accommodate a new section 7288.0 covering harassment training and education. Thus, after amendment, these reserved sections would be numbered: 7288.1 – Labor Organizations, 7288.2 – Apprenticeship Programs, and 7288.3 – Employment Agencies

PUBLIC HEARINGS

The Commission will hold two public hearings:

- In San Francisco, starting at 1 p.m. on February 1, 2006, at the Auditorium located in the basement of the Hiram Johnson State Building at 455 Golden Gate Avenue, San Francisco, California. The Auditorium is wheelchair accessible.
- In Los Angeles, starting at 10 a.m. on February 10, 2006, at the Auditorium located on the ground floor of the Ronald Reagan State Office Building at 300 South Spring Street, Los Angeles, California. The Auditorium is wheelchair accessible.

At each hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5 p.m. on February 10, 2006. The Commission will consider only comments received at the Commission offices, delivered in person to Commission personnel at either public hearing referenced above, or through Commission email by that time. Submit comments to:

Ann M. Noel, Acting Executive and Legal Affairs Secretary
Fair Employment and Housing Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

or

regs@fehca.ca.gov

AUTHORITY AND REFERENCE

Government Code section 12935, subdivision (a), authorizes the Commission to adopt the proposed regulations, which would implement, interpret, or make specific section 12950.1 of the Government Code (Ch. 933, Stats. 2004, A.B. 1825, Reyes).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission proposes to adopt a new section 7288.0 in Title 2 of the California Code of Regulations (CCR) regarding harassment training and education. The Commission also proposes to amend the existing sections 7288.0 – Labor Organizations (Reserved), 7288.1 – Apprenticeship Programs (Reserved), and 7288.2 – Employment Agencies (Reserved) by renumbering these sections to read 7288.1 – Labor Organizations (Reserved), 7288.2 – Apprenticeship Programs (Reserved), and 7288.3 – Employment Agencies (Reserved).

The purpose of the proposed regulations is to provide guidelines to employers regarding harassment training of supervisors mandated by Government Code section 12950.1.

Government Code section 12950.1, subdivision (a), requires all employers with 50 or more employees to provide two hours of harassment training to their supervisors.

Government Code section 12950.1, subdivision (b), states that the state shall incorporate the training required by subdivision (a) into the 80 hours of training required to all new state supervisory employees (Gov. Code § 19995.4), using existing resources.

Government Code section 12950.1, subdivision (c), defines who is an “employer” under section 12950.1.

Government Code section 12950.1, subdivision (d), states that failure to comply with this section does not necessarily result in liability of any employer to any present or former employee or applicant in any action alleging sexual harassment nor does compliance insulate the employer from such liability.

Government Code section 12950.1, subdivision (e), provides that the Commission shall issue an order requiring an employer to comply with section 12950.1’s requirements should an employer ignore those requirements.

Government Code section 12950.1, subdivision (f), provides that the training and education required by section 12950.1 is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

Government Code section 12935, subdivision (a), authorizes the Commission to adopt regulations to implement, interpret and make specific these requirements.

Section 7288.0, subdivision (a), defines terms used in Government Code section 12950.1, including who is a “contract worker,” an “employee,” an “employer,” a “supervisor,” a “new supervisor,” and an “instructional designer.” The proposed regulations also define “having 50 or more employees,” “other effective interactive training and education,” “two hours” of harassment training; and “training,” detailing the types of acceptable training.

Section 7288.0, subdivision (b), specifies the frequency and duration of harassment training, training at new businesses and training for new supervisors.

Section 7288.0, subdivision (c), specifies who is a qualified trainer or educator.

Section 7288.0, subdivision (d), specifies the necessary content for harassment training.

Section 7288.0, subdivision (e), specifies remedies for failing to train.

Section 7288.0, subdivision (f), specifies compliance with section 12950.1 prior to the effective date of the Commission’s regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school districts: The Assembly Appropriations Committee Fiscal Summary for the August 12, 2004 hearing on A.B. 1825 prepared by consultant Nora Lynn (hereafter, “Assembly Fiscal Summary”) estimated that the cost to local governments to comply with section 12950.1 would be \$2 million per year. These proposed regulations clarify section 12950.1 and impose no further mandates or costs.

Cost or savings to any state agency: The Assembly Fiscal Summary estimated an annual cost to the state of compliance with Government Code section 12950.1 to be \$750,000 to \$1,000,000 per year. These proposed regulations impose no further costs.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Commission estimates that the total statewide costs that businesses may incur to comply with Government Code section 12950.1 over a three year period would be \$68,732,526. The proposed regulations clarify section 12950.1 and impose no further costs. The Commission arrived at this figure with the following calculations, assumptions and estimates:

Number of employees working for affected businesses: ¹	9,037,805
Number of supervisors and managers working for these businesses: ²	1,174,915
Average cost per supervisor for training: ³	\$39
Initial cost to train all 1,174,915 supervisors ⁴	\$45,821,685
Cost over three years to train 1,174,915 supervisors ⁵	\$68,732,526

The Commission estimates that a representative private business of 50 employees would need to train an estimated seven supervisors or managers at an average cost of \$39 per supervisor for a total initial cost of \$273. The training is required every two years, so that the annual cost of compliance with Government Code section 12950.1 would be \$137 per

¹ Source: Employment Development Department, Labor Market Information Division, Table 1, Number of Businesses, Number of Employees, and Third Quarter Payroll by Size of Business, State of California, Third Quarter, 2003, found at: [http://www.calmis.ca.gov/FILE/INDSIZE/CAL\\$SF3.PDF](http://www.calmis.ca.gov/FILE/INDSIZE/CAL$SF3.PDF); employees working for businesses with 50 or more employees were added to arrive at 9,037,805.

² The Commission estimated that 13% of the 9,037,805 employees would be supervisors or managers, for a total number of supervisors and managers needing training equaling 1,174,915. No data was available for the number of supervisors and managers in private businesses with 50 or more employees. The Commission used the same percentage of supervisors and managers working for private industry that work for state government. The Department of Personnel Administration reports that 25,000 supervisors and 500 managers work for a state workforce of 321,394, or 13% of the state workforce. (Sources: Number of state supervisors and managers—Assembly Fiscal Analysis; total state employment figures of 321,394—California Statistical Abstract 2004, Table C-5, “Employees in California State Government a/ 1975-76 to 2002-3”, found at: http://www.dof.ca.gov/HTML/FS_DATA/STAT-ABS/StatAbstrct04www.pdf.)

³ The Assembly Fiscal Analysis estimated a cost per supervisor for training to be \$39 and the Commission used this figure. This estimate is consistent with an estimate supplied by Garry Mathiason of Littler, Mendelson, estimating the cost for training to be from \$10 to \$40 per supervisor, see Exhibit A, Tab 7.

⁴ \$1,174,915 times \$39 equals \$45,821,685.

⁵ Training is required only every other year, so a three year average is \$68,732,526. Per State Administrative Manual section 6622, the Commission calculated costs of the regulations for three years.

year for a representative business. The proposed regulations do not impose any additional costs beyond the statute.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California.
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

The Commission has determined that the proposed regulations do not affect small businesses. The proposed regulations only affect private businesses with 50 or more employees.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Ann M. Noel
Acting Executive and Legal Affairs Secretary
Fair Employment and Housing Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
Telephone: (415) 557-2325
Facsimile: (415) 557-0855
regs@fehca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Noel at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Ann M. Noel at the address or phone number listed above, or by downloading copies from the Commission's website at www.fehc.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this Notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ann M. Noel at the address indicated above. The modified text will also be available on the Commission's website at www.fehc.ca.gov. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Noel at the above address or on the Commission's website at www.fehc.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.fehc.ca.gov.

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